

Appeal from decision of Idaho State Office, Bureau of Land Management, deeming unpatented mining claims abandoned and void. I 15280.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Where a mining claim was located in September 1964 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim was properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: William E. Day, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

William E. Day appeals the June 24, 1981, decision of the Idaho State Office, Bureau of Land Management (BLM), which deemed the unpatented Moss

Back Nos. 1 through 16 placer mining claims abandoned and void because the claims had not been recorded with BLM on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant states that he recorded his mining claims with the Burley District Office, BLM, and the District Ranger of the Sawtooth National Forest, and he thought that such recordation surely should satisfy the FLPMA requirement. He asserts that five families are dependent upon these claims for their living.

The land occupied by the claims is in T. 13 S., R. 25 E., Boise meridian, partly on public land in the Burley District of BLM, and partly on land within the Sawtooth National Forest. The claims were located in 1964.

[1] FLPMA requires the owners of unpatented mining claims located on or before October 21, 1976, to file with the proper office of BLM ^{1/} on or before October 22, 1979, a copy of the official record of the notice of location and a copy of the evidence of assessment work, and on or before December 30 of each calendar year thereafter a copy of the evidence of assessment work or a notice of intention to hold the claim, as recorded in the appropriate county recording office. The statute clearly states that failure to file such instruments timely shall be deemed conclusively to constitute an abandonment of the claim by the owner. 43 U.S.C. § 1744(c) (1976).

In Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981), the court held that the FLPMA requirements for filing of unpatented mining claims are not arbitrary or unreasonable. In Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), the court held that the regulations promulgated under FLPMA, that unpatented mining claims could be deemed abandoned and void if filings required under the Act were not timely made, were not in excess of statutory jurisdiction, authority, or limitations. Neither court suggested that the recordation requirements were in any way unconstitutional.

The responsibility for complying with the recordation requirements of FLPMA rests with the owner of an unpatented mining claim. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Where a mining claimant has not made the necessary filings under FLPMA, the claimant must bear the consequences of his failure to act.

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate without the regulations. See Northwest Citizens for Wilderness Mining, Inc. v. Bureau of Land Management, Civ.

^{1/} The "proper BLM office" for mining claims located in Idaho is the Idaho State Office in Boise, Idaho. 43 CFR 1821.2-1(d) and 3833.0-5(g).

No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, supra at 196, 88 I.D. at 371-72.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anne Poindexter Lewis
Administrative Judge.

